

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

THOMAS B. WATT III,

Plaintiff,

CIV. S-04-0099 PAN

v.

JO ANNE B. BARNHART,
Commissioner of Social
Security,

Memorandum of Decision

Defendants.

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Pursuant to 42 U.S.C. § 405(g), plaintiff requests this court review defendant's decision denying plaintiff disability benefits.

If the claimant meets eligibility requirements, the Commissioner bases his decision upon a five-step analysis. First, the claimant must not currently be working. 20 C.F.R. § 404.1520(b). Second, the claimant must have a "severe" impairment. 20 C.F.R. § 404.1520(c). Third, the medical

1 evidence of the claimant's impairment is compared to a list of
2 impairments that are presumed severe enough to preclude work; if
3 the claimant's impairment meets or equals one of the listed
4 impairments, benefits are awarded. 20 C.F.R. § 404.1520(d).
5 Fourth, if the claimant can do his past work benefits are denied.
6 20 C.F.R. § 404.1520(e). Fifth, if the claimant cannot do his
7 past work and, considering the claimant's age, education, work
8 experience, and residual functional capacity, cannot do other
9 work that exists in the national economy, benefits are awarded.
10 20 C.F.R. § 404.1520(f).

11 Defendant found plaintiff was eligible, "has mild lumbar
12 degenerative disease, mild multilevel degenerative cervical disc
13 disease, lumbar facet arthropathy, and bilateral carpal tunnel
14 syndrome" but no listed impairment, that he cannot perform his
15 past work but, based upon expert vocational evidence, he can work
16 as a hand packer/packager, grain/feed washer or grader/sorter and
17 is not disabled. Tr. 16, 19-20.

18 This court must uphold the Secretary's determination that
19 a plaintiff is not disabled if the Commissioner applied the
20 proper legal standards and if the Secretary's findings are
21 supported by substantial evidence. Sanchez v. Secretary of
Health and Human Services, 812 F.2d 509, 510 (9th Cir. 1987).
23 The question is one of law. Gonzalez v. Sullivan, 914 F.2d 1197,
24 1200 (9th Cir. 1990). Substantial evidence means more than a
25 mere scintilla, Richardson v. Perales, 402 U.S. 389, 401 (1971),
26 but less than a preponderance. Bates v. Sullivan, 894 F.2d 1059,

1 1061 (9th Cir. 1990). It means such relevant evidence as a
2 reasonable mind might accept as adequate to support a conclusion.
3 Richardson, 402 U.S. at 401. The court cannot affirm the
4 Commissioner simply by isolating supporting evidence but must
5 consider the entire record, weighing evidence that undermines as
6 well as evidence that supports the Secretary's decision.
7 Gonzalez v. Sullivan, 914 F.2d at 1200. If substantial evidence
8 supports administrative findings, or if there is conflicting
9 evidence that will support a finding of either disability or
10 nondisability, the finding of the Commissioner is conclusive,
11 Sprague v. Bowen, 812 F.2d 1226, 1229-30 (9th Cir. 1987), and may
12 be set aside only if the proper legal standards were not applied
13 in weighing the evidence. Burkhart v. Bowen, 856 F.2d 1335, 1338
14 (9th Cir. 1988).

15 Plaintiff claims the decision is not within the "spirit"
16 of an appeals council order reversing a prior denial of the same
17 application, and that defendant erroneously rejected the opinion
18 of a treating physician and plaintiff's testimony.

19 This court's review is limited to ascertaining whether
20 defendant applied the proper legal standards and if her findings
21 are supported by substantial evidence; it does not review to
22 decide whether the "spirit" of a decision by defendant's appeals
23 council has been followed.

24 Defendant found plaintiff was malingering and on this
25 basis rejected the opinion of a treating physician, Dr. Soloniuk,
26 apparently because defendant thought Dr. Soloniuk gave too much

1 weight to plaintiff's subjective complaints, as the objective
2 signs were minimal. Tr. 17.

3 Defendant's finding that plaintiff was guilty of "obvious
4 exaggeration of his symptoms and limitations" was based upon two
5 reports. Tr. 17. The first was made June 7, 1999, by Dr. James
6 Tate, a specialist in neurological surgery, who said, without
7 explanation, plaintiff "has an abundance of subjective symptoms
8 without associated objective findings." Tr. 229. The second is
9 a much more thorough report by a board certified orthopedic
10 surgeon, Dr. Charles Miller, after examination in April 2003.
11 Tr. 473. Dr. Miller reported his opinion that plaintiff's
12 "complaints were severely amplified" and that his use of a cane
13 was unnecessary. Tr. 467. When these observations were
14 presented to Dr. Soloniuk, a specialist in pain management, in
15 June 2003, however, he vehemently disagreed and explained why
16 plaintiff may be suffering the pain he complains of without the
17 objective clinical findings that Dr. Miller apparently thought
18 were required to explain such pain. Tr. 490. Defendant dealt
19 with this conflict of medical opinion whether plaintiff was
20 malingering only by saying:

21 Dr. Soloniuk's attempt to overcome the evidence of
22 the claimant's exaggeration is not persuasive in
23 view of the substantial evidence indicating
24 otherwise. Tr. 17.

25 Unfortunately, that amounts to no more than saying defendant
26 prefers the countervailing opinion, not why it is preferred over
the treating physician's opinion.

1 Accordingly, the decision must be reversed.
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3 Dated: May 18, 2005.
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5 /s/ Peter A. Nowinski
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7 PETER A. NOWINSKI
8 Magistrate Judge
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